Supreme Court, U.S.
FILED

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NO: _____

IN THE UNITED STATES SUPREME COURT

ON WRIT OF CERTIORARI
TO THE NINTH CIRCUIT APPEALS COURT

FARUQUI, Petitioner

v.

STATE OF CALIFORNIA; WILSON; LUNDGREN; LUCAS; ZECHER; ALLEN; STONE; KOMAR; BONNEY; THOMAS; HANSEN; NICHOLS; AMBLER; LEAHY; COTTLE; AGLIANO; BAMATTRE-MANOUKIAN; DAVIDSON; TYLER; UIAB; PG&E; BURKE; CAE; SMITH; HUBBLE; HOFFMAN; ZYCAD; DAVENPORT; WILSON, SONSINI, GOODRICH & ROSATI; THOMPSON; GRAY; PIERCE; CHEN; ROSE; GRAHAM & JAMES; TROESCH; GARFIELD; BERTONI; ROSSI, Respondents

G. AHMAD FARUQUI, Petitioner
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31pp

QUESTIONS PRESENTED

1- Do the lower courts, federal and state, have a duty to follow the rulings of the Supreme Court, the laws of the state and the United States which are cited in this petition, and if petitioner raised issues of law and constitutional violations in courts below, and the courts ignored them, did they deny his rights subject to correction by this Court? If petitioner asked for jury trial and was denied that right by subterfuge and unlawful actions, does he have the right to bring an action under 42-1981 et. seq., or in equity?

2- If the law was not applied to petitioner's case and only to his case, repeatedly and knowingly, does petitioner have a recourse in the federal courts? and in this Court? If the state courts refused to follow the law as defined above, were their decisions void as a matter of law, and subject to review by the federal courts, and reversible, regardless of the time elapsed? If those decisions were made with full knowledge of their voidness, was it fraud on the court, and those decisions subject to reversal? If a group of private parties form a conspiracy with a group of judges whereby they all deny a citizen his right to acces to judicial system, do they form a nexus which is liable under the RICO statutes, when elements of obstruction of justice, security fraud, mail and wire fraud are alleged?

3- If an appellant raises constitutional and legal issues in his notice of appeal and subsequent pleadings, does the circuit court have an affirmative duty to address all of those issues?

4- If, a citizen's due process and equal protection rights are violated so many times that it becomes voluminous just to enumerate them -- does he lose those rights by sheer number of those violations?

5- If defendants made false and misleading affidavits to secure judgments in the state courts was it fraud on the court and were those judgments void, and subject to reversal regardless of the time elapsed?

6- If a litigant does not appear in forma pauperis but exercises the right to appear in pro se, does he have a right to receive full benefits of the legal procedures, the statutes and the prevalent judicial opinions, and do the courts have an affirmative duty to accord him those rights?

7- Can a judge issue unlawful orders, nullify statutes, create nonexisting stipulation, knowingly and repeatedly act contrary to statutes, knowingly and repeatedly deny a litigant his property rights, or rights guaranteed by the Constitution, knowingly allow misleading and false affidavits, and still claim absolute immunity from action in damages?

8- All questions that are related to the above and discussed in the body of the writ.

9- Whether a district judge who was a recent colleague of many of the defendants at the superior court bench should recuse on his own or on motion to recuse.

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Petitioner requests the Court to grant a Writ of Certiorari to review the judgments of the Ninth Circuit Court of Appeals, and the district court.

OPINIONS BELOW

Judgment of the circuit court (App. p. 1) -- January 30, 1996; order of the circuit court denying rehearing (App. p. 1) -- January 22, 1996; order of the circuit court affirming only part of the judgment (App. p. 2) -- December 12, 1995; judgment of the district court (App. p. 3) -- May 17, 1994.

JURISDICTION

The Court's jurisdiction is invoked under Title 28-1254(1).

STATUTES AND AUTHORITIES

U.S.C. Title 42-1981 et. seq., Title 18-1961 et. seq., Title 28-471, Title 28-455.

California Code of Civil Procedure Sections 128.5, 437c, 473, 446, 583.340, 2030, 2031, 2033, Civil Code Sections 1708, 3295, 3512 through 3539, Public Utility Code Sections 779, 779.1, 2106, 2108, 2109, Unemployment Insurance Code Section 1256, Business & Professional Code Section 6068, Penal Code Section 182, California Judicial Canons of Ethics.

Brown v. Board of Education, 347 US 483, 74 SCt 688 (1954); ***Cooper v. Aaron***, 358 US 1; (1958); ***Creighton v. Anderson***. 483 US 635, 638-639, (1987); ***Elder v. Holloway*** 114 SCt. 1019 (1994); ***Ex Parte Virginia***, 100 US 339 (1879); ***Haines v. Kerner*** 404 US 519-521 (1972); ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.*** 322 US 238, 248-251 (1943); ***Hughes v. Rowe***, 449 US 5, 9 (1980); ***In re. Intermagnetics*** 926 F2d 912, 917 (1991 9th Cir); ***Liljeberg v. Health Services Acquisition Inc.*** 486 US 847 (1988); ***Memphis Gas, Light and Water Division v. Craft*** 436 US 1 (1978); ***Mireles v. Waco*** 502 US 9, (1991); ***NOW v. Scheidler*** 114 SCt 798 (1994); ***Parratt v. Taylor***, 457 US 527, 540- 545, ***Preston v. U.S.***, 923 F2d 731; ***Pumphrey v. KW Thompson*** 62 F3d 1128 (1995 9th Cir); ***Trevino v. Gates*** 23 F3d 1509, (1995 9th Cir); ***United States v Throckmorton*** 98 US 61, 65-66 (1878); ***United States v. Aguilar***, 115 SCt 2357 (1995).

ERRORS OF THE COURTS BELOW

The circuit court made two errors. (1) it did not address all the issues raised in the notice of appeal and in the opening brief. (2) Its judgment conflicts with the authorities cited herein, even though those issues were raised in the appeal.

The district court (1) orders are in conflict with these authorities, (2) Judge Whyte should have recused per ***Liljeberg***, ***Preston***.

BASIS OF THE PETITION

Petitioner is entitled to justice, due process and equal protection under the laws

The Court has consistently upheld the due process, and equal protection rights

STATEMENT

After review of the petition the Court will agree that PG&E did not obey the law, the state courts did not enforce the law and the district court as well as the circuit court did no protect petitioner's statutory and constitutional rights, either by silence or by ignoring the authorities cited by him.

Even though petitioner would appreciate a decision in his favor, he also believes that the court will do justice, not as a favor to him or to the respondents. This nation deserves equal justice.

Petitioner brought this action and writ, not because decisions in the state courts went against him, or that the state judges exercised discretion, however one-sided, but that the judges had no discretion, or jurisdiction to act the way they did. In fact they were prevented to rule that way by the very statute that petitioner cited and they created false evidence or allowed false evidence to be introduced or prevented the falsity to be known. So far no defendant has claimed that petitioner did not have the right to those laws, they just do not mention the laws in their decisions. The same has happened in the district and circuit court proceedings. The Court surely will not sanction such acts. The courts have ignored the laws cited by petitioner.

Petitioner asks the Court to vacate the district court judgment and allow him to go to trial for his rights under the statutes and the Court's opinions as well as the state statutes, and present them before a jury to determine his damages which include the benefits of the defaults by certain defendants. This will mean that the state court decisions were either void or were secured by fraud on the court, and no defense of expiration of statute of limitation will be allowed for them. As for defendant judges, petitioner believes that their past conduct makes it necessary that they pay damages for their actions if petitioner can show that those actions were not judicial in nature even though they were apparently taken from the bench of the court. Petitioner intends to give clear notice to defendants of the nature and actions of their liability, and believes that FRCP 12(b)(6) dismissal was a clear error and its affirmation by the circuit court was also. PG&E could not have received a summary judgment as a matter of law or on the basis of evidence produced in the district court. Petitioner also should be allowed to serve on defendants whose address is not known at present -- Ms. Bertoni and Mr. Burke. Certain defendants should be considered to have been served the complaint because their employers or attorneys of record received and kept the documents served and neither returned them nor forwarded them to the persons involved. The service on the UIAB and ALJ should be similarly allowed since they did receive the summons by personal service. Petitioner's additional costs of personal service should be reimbursed to him.

This case was assigned to Judge Whyte who is part of the Judicial council's assigned judges to reduce civil costs and delays under 28-471. Those cases are assigned special service and pretrial conference procedures. To reduce costs plaintiff is allowed to effect service under the acknowledgment form, rather than the costly personal service. If the parties do not respond then they bear the cost of service. Certain defendants responded to that procedure, however others, in concert chose to deny the acknowledgment. Some of them intercepted mail for others. However personal service was effected on some. Petitioner requested the district court to grant him the cost of that service, the court refused. The circuit court also did not rule on that.

The defendant judges have essentially attempted to modify or annul the statutes 779.1 of PUC and 2033 of CCP, and have refused to apply the other laws. They did not perform their duty to implement them, usurping legislative power which is beyond all jurisdiction.

Petitioner understands that the legislature makes the laws and the Supreme Court and other appellate courts define how those laws are to be implemented. The lower courts follow those guidelines and it is there that the real test of those laws lie. It is futile if the laws are made, and no one applies them on behalf of the citizens. Then we are living in a split system which has high ideals and no will to see them implemented. Petitioner brought these actions in the state courts and before the district court pursuant to these laws and opinions. The lower courts denied the principles, the intent and the spirit of these laws, and the opinions of the Supreme Court at their will and whim. When petitioner cited the laws and opinions as listed herein, the defendants acted as if those laws and opinions did not exist. even the district and circuit court completely ignore those opinions, they do not even mention them. Hence this petition.

Does petitioner have a right to all the benefits of these laws and opinions, or is he to be treated by a separate but equal standard?

Is the law, subject to the whims of individual judges or is it to be a dependable consistent standard? If there is evidence of conspiracy between judges and parties to litigation, and not just one single aberrant action, what are the safeguards for a law abiding society if a whole group of judges and attorneys operate to frustrate and obstruct justice? It is a frightening scenario that should alarm the judiciary and not be allowed to fester.

WHY THE PETITION SHOULD BE GRANTED

In ***Cooper***, this Court found it unacceptable to delay the implementation of its decision, and held a special August term. Petitioner asks the Court to determine how and why the courts below have ignored these laws, and the opinions of this Court, so extensively over a span of 18 years? A cursory observation will show that it was not accidental or isolated incident. Petitioner does not believe that these laws are decorative in nature (or a mere technicality, as one of the defendant characterized them), but that they were designed for the benefit of the citizens, including petitioner. As a matter of law, petitioner believes, all decisions made below which conflicted with the law, were void and are subject to reversal, ***Throckmorton, Hazel-Atlas.***

Petitioner believes that:

Throckmorton and ***Hazel-Atlas*** relate to void judgments and judgment secured by fraud on the court, that they can be litigated

regardless of the time elapsed and are not subject to the expiration of the terms of the court which made them or statute of limitations -- the defense raised by defendants. Based on these authorities the 9th circuit court in ***Pumphrey*** found that the non disclosure of material facts by the corporate counsel was fraud on the court, defeating the defense of res judicata. In ***In re Intermagnetics*** the same court found that false declaration in court proceedings was fraud on the court and voided the judgment. Defendant attorneys who made false declarations have contended that they owed no duty to be truthful.

Creighton declares that action in damages are a remedy against any state official or group who knowingly and repeatedly violates the clearly established right of an individual.

Elder requires that a litigant should receive the benefit of all applicable laws, and ***Hughes*** and ***Haines*** relate to the errors that district and appeals court can make when they miss the allegations of a pro se litigant for lack of artfulness or of the use of familiar phraseology employed by attorneys.

Liljeberg sets the standard for recusal under 28-455(a) even if the judge is unaware of the perception of partiality. Judge Whyte has ignored ***Liljeberg*** in his order on recusal.

MLGW and ***Parratt*** define the importance of property rights and, that a utility which operates under the guise of state laws should provide a proper notice and pretermination hearing before disconnecting its services, a matter that has been missed in all the proceedings below.

NOW sets the standard for actions in RICO and dismissal under FRCP 12(b)(6).

Petitioner did not bring the action against the judges until he was forced to recognize in 1993, that the only reason these defendants acted in concert and made the decisions in the state courts could be explained by the existence of a conspiracy and a nexus serving certain unlawful objectives. It was then that he amended his original civil rights action to include the RICO count.

Regarding judicial immunity, the court is asked to clarify the terms "beyond all jurisdiction", and "functions of a judge", and relate this to the reason for absolute immunity. Petitioner's understanding is that the immunity is granted to allow the judges to act concienciously without fear of repercussions from action in damages. That it does not grant them a license to violate citizen's rights at will. That it is not a privilege without any check. As alleged in this case, if the individuals conspire and indulge in obstruction of justice by nullifying the statutes

(legislative action beyond all judicial jurisdiction) (***Trevino, Ex Parte Virginia***), or creating nonexistent facts, or issuing unlawful orders, or conspiring with each other not to correct those errors or misdeeds -- and those are facts on the record rather than the state of mind of the individuals, immunity should not be available to them. In the case of conscious mistakes the Court has found that immunity is not available because it would subvert justice, and becomes a license to abuse the power and create a tyranny and destruction of an orderly civilized society. Judges are duty bound not to ignore the law. If they knowingly act otherwise the immunity should not be available (How can a judge at the appellate level find for a stipulation that did not exist in the record and was not even pleaded by the defendants?) [1] Should there be absolute immunity for such acts? In ***Aguilar*** the Court found violation of RICO statute against a judge for disclosing information which he came across only because he was a judge, but his acts were not judicial, the basis of plaintiff's allegations in his complaint.

SUBJECT OF THE PETITION

The questions presented to the Court ask the Court to define to petitioner and all citizens of the nation their rights which they can claim on their own behalf. California Civil Code mandates that if the rights are not exercised, they are lost. This Court will let the citizens know that if they have rights, they can exercise those rights and no combination of attorneys, judges and corporations should be able to deny those rights. It is requested that those matters be defined so clearly that there is no ambiguity. Petitioner's RICO action is based on an unwritten but powerful nexus of these defendants to deny petitioner's rights and thus obstruct justice in that pursuit, a conspiracy supported by court records. In pleadings before the district and appeals court, defendants have conceded that they violated petitioner's rights. However, they claim defenses of res judicata and statute of limitations.

In all cases petitioner asked for rehearing and the defendants did not correct their unlawful acts. The attorneys for the employers, used false pleadings, misleading and false affidavits and undue influence with the defendant judges to receive their judgments. Judge Whyte, the district court judge was involved in one of the proceedings, and refused to recuse himself even after a motion to that effect.

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[1]Opinion of Judge Cottle produced by respondents in the courts below.

There may be a question, as to the credibility of such a nexus. ***Kimes v. Stone*** is one example, others may also exist. Cases which affect the enterprise are channeled to some judges and all acts of the enterprise enjoy the cover of legitimacy. These defendant judges have been the subject of legal actions in the past. Under RICO act's liberal construing the allegations of the complaint stand. Congress has intended to prevent such enterprises by allowing both civil and penal actions. If this state of affairs is allowed to go unchallenged, the losers will be the judicial system, citizens and the nation. That is why the intent of the Congress was to allow liberal construing, and it has been upheld by this Court in many cases. See ***NOW***.

In ***United States v. Aguilar***, 115 SCt 2357, 132 LEd2d 520 (1995) this Court declared that obstruction of justice is defined by the Omnibus Clause "corruptly or by threats or force or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice" serves as a catchall for persons who even endeavor to influence, obstruct or impede the due administration of justice. Section 1503 of 18 U.S.C. Petitioner's cause of action in RICO is based on the acts of defendants for that very conduct. They impeded, influenced and obstructed the due process of justice in preventing petitioner from receiving the benefit of the laws of the United States in the state and federal courts, by use of false declarations, creation of nonexisting stipulation, nullification of statutes and unlawful orders, denial of statutory mandates and acts of extortion. They included threats to petitioner to prevent him from asserting his lawful rights and sanctioning him for it. They acted in concert and without a basis in law, -- as a corrupt nexus. Their acts are so consistent that not even once did they rule in favor of petitioner. These judges ignored all of petitioner's pleadings based on statutes and opinions cited by him. Defendant attorneys have been shrill in their pleadings. Judge Aguilar was alleged to have used his special knowledge to impede the due course of justice according to the Court. Defendants are alleged to have done the same in concert and in conspiracy.

The underlying theme of all the questions is: Whether the law should be applied or nullified, and whether there are two sets of standards of law, one for the petitioner and one for others? Whether we are a nation of laws or of people who can ignore the law as they please, be they judges, attorneys or corporations?

Petitioner comes before this Court with very compelling questions. It is hoped that the Court will give it full consideration. When the Court in 1978 ruled that the right to supply of utility service was a property right, it also declared that the right demanded from the utility which acts under the color of law to be constrained by the due process clause. ***MLGW*** above. A citizen who brings an action against such a utility company, should be able to maintain the action if the company did not provide a notice before termination of service, for a hearing before a properly designated officer of the company prior to termination of the service. That is how petitioner interpreted that opinion. Did petitioner have a right to bring that action? The Court in 1978 was unanimous that the consumer had a right to bring the action in damages post termination. If such an action was instituted, was it the duty of the state courts to determine whether such a notice was given, and if that was not given, did the utility company violate the due process right of the citizen? If the state courts, at all levels, upto the state supreme court, failed to address the due process right issue, did they deprive the petitioner of his due process and equal protection rights?

After Judge Whyte made his orders of January 10, 11 1995, which conflict with the Supreme Court decisions, petitioner made a motion for Judge Whyte to recuse, and cited ***Liljeberg***. Judge Whyte refused to recuse and did not mention ***Liljeberg*** in his order. He was a recent colleague of many of the defendants, and could be a witness on how those persons operated in the superior court proceedings which are the subject of this action. He had granted an order shortening time for Zycad to file its motion to dismiss. Without that order, Judge Leahy could not grant dismissal to Zycad. That was a significant action by Judge Whyte, not a routine order. That judgment of dismissal against petitioner was void. Petitioner appealed the recusal order in the circuit court. Circuit court judgment is silent on the issue of recusal. *If Judge Whyte should have recused, all of his orders and the judgment should be vacated.* (App. pp. 3-6)

Petitioner believes that the Supreme Court bases its opinions on the Constitution which is rooted in our system of morality, truth and principles and does not tolerate trickery, subterfuge, or fraud -- (however they may be disguised by artful opinions of the state courts or the pleadings of respondents). Petitioner also believes that the Court decisions are consistent. Once this Court pierces the artful subterfuge, it will be clear that petitioner was systematically denied access to justice, to jury trial, and respondents engaged in obstruction of justice through

false and misleading declarations, finding non existing stipulation, and never once mentioning the due process rights of petitioner, in all of the proceedings below, even though the issue was raised repeatedly. [2]

Petitioner believes that our system of laws is based on reason, but it also includes the heart, soul and the conscience of the nation, represented by the Supreme Court. The decisions of the Court justify that trust, and petitioner is addressing the Court and individual Justices in that spirit.

The subject matter of this writ involves complex issues, and is lengthy. This should not be the reason why petitioner cannot rectify the harm done to him.

If, the significant issues raised by this petition are ignored again, it will create a chilling effect on the citizenry of the nation that for them there is no justice if they choose to bring the matters of their rights in court actions on their own. Petitioner does not believe that he would be disappointed by the Court. **Would the Court be apathetic?** Petitioner does not mind if the case is decided after receiving full attention according to the opinions cited here. If reason and law is against petitioner's position, at least it should be clarified, and his pleadings should not be ignored. That has been the history of this case.

Petitioner classified the actions of the defendants into 18 categories in his First Amended Complaint at pages 3-4, section IV. The county defendants later recited those allegations in their brief. These allegations represent a systematic pattern of denying the right to a jury trial, or obstruction of justice with full knowledge. For example, a judge has no authority to issue an unlawful order, it is beyond all jurisdiction. (Action of Judge Zecher as conceded by her attorney) It is also beyond all jurisdiction for a judge to nullify the statute *2033* of California Code of Civil Procedure which was enacted specifically to remove judicial power to grant relief from default of request for admissions, *as an urgency measure by the legislature*. (Action by Judge Stone). This is unlawful usurpation of legislative power, clearly beyond all jurisdiction . [3] Respondents' brief cites these examples and then claims that petitioner has no standing against defendants. The circuit court, in

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[2]Petitioner has repeatedly, and consistently raised the due process issue before the state courts and the federal courts, no consideration has been given - they have been ignored. Apathy can be very injurious to our legal system.

[3]***Trevino v. Gates*** 23 F3d 1509, Cert. denied 115 SCt 327. Absolute immunity is not for the person or the position he holds, it is for the function he performs. If a judge obstructs justice, no absolute immunity should arise.

an order which does not detail the reasons for it, seems to agree with that argument. Judge Goodwin, in the circuit court hearing told petitioner that he understood his position regarding the nullification of that statute. The circuit court judges asked no questions and respondents did not have any answers to the questions posed by petitioner regarding the nonexistent stipulation. At the hearing petitioner did offer to answer any questions the circuit court posed -- no questions were asked.

Petitioner believes that when this Court ruled in the citations made herein, it meant them to be implemented, and not to be ignored or nullified. In 1978 the Court made a decision in ***Memphis Gas, Light and Water Division v. Craft*** 436 US 1 (1978). However, when petitioner brought an action which violated that law, the state courts and now the federal courts have ignored it to the extent that they do not mention it in their rulings. Petitioner also believes that if he had a right under the state statutes, those rights, were clearly established, and should not have been denied to him by the defendants. Those rights were repeatedly denied at all stages of state courts and were not even mentioned in the federal court rulings. [4] Is petitioner wrong about his belief, or are those court decisions contrary to law and subject to correction by the Court? A civilized society cannot endure if there are two sets of standards, one for petitioner, and another one for others. Petitioner exercised his right to represent himself in the courts, he should not be penalized for that. He asks this Court to recognize that right and other rights denied to him by the defendants and the courts below.

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[4]California Civil Code §3539 states "Time does not confirm a void act." All decisions against petitioner in the state courts were in violation of clear laws, hence void, §*3541* states: "Interpretation which gives effect is preferred to one which makes void". Defendants' actions rendered the following statutes void, §§*128.5, 437c, 473, 446, 583.340, 2031* through *2033* of Code of Civil Procedure, §§*779, 779.1, 1757, 2106* through *2109* of Public Utility Codes, §§*1708, 1714* of Civil Codes, §*1256* of Unemployment Insurance Codes regarding presumption of leaving employment for good cause, §*2922* of Labor Code regarding the definite length of employment. §*3542* states: "Interpretation must be reasonable". In petitioner's case the interpretations have been arbitrary, capricious, contrary to law and unreasonable. §*3523* states: "For every wrong there is a remedy". Petitioner's position is that for the wrongs done to him remedies for damages should be available to him, including benefit of defaults by CAE and PG&E as it happened in the state courts and was denied to him by the void decisions of the defendants. §3528 states: "The law respects form less than substance". All decisions against petitioner have some convoluted semblance to judicial proceedings in form, but they are devoid of substance.

If the allegations of the complaint are true, [5] and they are, would this Court approve that judgments can be obtained by defendants based on false and misleading affidavits of attorneys, or that the appeals court judges can create non existing stipulation. [6] If this Court allows such actions to be the basis of judgments in the courts -- anywhere -- it will be breaking a completely new ground of law contrary to all previous opinions.

The alternative way to pose these questions is: Is it too much for a citizen to expect from the courts to uphold his rights which are clearly defined and he appears in pro se, or is that right a hostage of the intermediation by attorneys with influence? Petitioner believes and this Court will agree that if a citizen takes his case to the courts and has a right under the law, he should receive all the benefits of that law and that right. That is all that is requested by this petition.

Petitioner raised these questions in the notice of appeal. They were not addressed by the short order and judgment of the circuit court. (App. pp. 1, 2) Petitioner is not accorded equal treatment under the law.

The petition asks the Court to affirm Its own prior decisions, and to either Grant the writ, Vacate the lower court decisions, and Remand **(GVR)** for proper action according to these and other opinions of the Court, or make a more definitive ruling which expands on ***Haines, Hughes*** and clarifies the rights of pro se litigants who do not happen to be prisoners or do not file in forma pauperis.

If the events as occurred in this case, had happened to any one known to the Justices, would they recommend them to suffer the losses inflicted, and be without recourse?

BRIEF DESCRIPTION, HISTORY AND ELEMENTS OF THE CASE

I

In 1978, petitioner brought action against PG&E when it disconnected his utility supply without personally contacting him and without setting a hearing which involved a disputed demand for duplicate deposit. He notified them that their actions were violation of

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[5]Petitioner will produce that evidence to the Court if so required. Defendants have the burden to produce the stipulation that is part of the opinion of Judge Cottle, which was introduced by defendants in the district court proceeding.

[6]Defendants Gray, McPharlin and Burke made such affidavits, defendant Cottle created a stipulation in his opinion.

the law, they persisted, he filed the state court action. In the proceedings before the state courts, the defendants never addressed the issue of the personal contact and hearing or due process required by ***MLGW***. In an appellate opinion by defendant Stone, he found that PG&E was acting pursuant to the state public utility commission's tariffs, yet failed to address the due process violation. Petitioner asked for rehearing and it was denied even though he reiterated the issues of personal contact and hearing. He cited ***MLGW*** in the original complaint and subsequent proceedings. California Supreme Court refused to review the appellate decision, without comment. Petitioner had cited ***MLGW***. Later in 1986 again, PG&E disconnected the utility supply without personal contact or a hearing. That matter was dismissed by the superior court and on appeal, defendant Agliano found that PG&E had substantially complied with the statute that was enacted to prevent such disconnections, and had created a new crime. [7] Again the rehearing and review were denied.

II

Petitioner was dismissed by his employer CAE Systems while CAE was engaged in fraudulent acts of merger or acquisition in violation of the securities laws. Petitioner filed an action and served a Request for Admissions (RFA). CAE defaulted, petitioner notified them in strict compliance with Section *2033* of the Code of Civil Procedure (CCP) of the state. The defendants did not move to set their default aside within the statutory time. When petitioner placed those admissions as being deemed admitted, defendant Stone, in a minute order denied that they were deemed admitted. In a summary judgment motion which was surreptitiously moved to Nichols' court by Hansen, who would have heard the motion, defendant Nichols struck properly placed affidavits in opposition to the motion, ruled that petitioner was not present, even though he was, accepted conclusory affidavits on behalf of CAE, sanctioned petitioner for raising the deemed admission issue, and granted the summary judgment. When petitioner appealed, defendant

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[7] In his opinion Judge Agliano found that PG&E was in substantial compliance even though the statute required "all' of the elements of the notice to be mandatory, using the language "shall". There cannot be substantial compliance according to the letter and the spirit of the statute under these conditions. PG&E's acts were in gross violation of the statute. This is use of arbitrary standards by the defendants only for petitioner and is consistent with all of their acts.

Cottle in his opinion found for a stipulation which CAE had never raised and which was never in the record. The petitions for rehearing and review were denied.

Petitioner's claim is that CAE hired him to boost its position for merger or acquisition which involved security fraud. It dismissed him without cause for his honest actions, was later acquired for $75,000,000 by another company, who kept losing money because CAE did not have a working product as it was presented to petitioner before he was hired. Later the acquiring company sold CAE to one of CAE's competitors for $5,000,000. CAE had no intention to keep petitioner employed for five years even though it offered a five year stock option plan as an inducement to leave a secure position, and represented to petitioner that it had the best mature product of all of its competitors, which was false. The dismissal without leave to amend did not allow petitioner to include this allegation in his complaint.

III

In an action by petitioner against petitioner's employer ZYCAD, who was engaged in a joint venture with CAE, petitioner was asked to resign his position. Later in a hearing on petitioner's unemployment claim defendant Davenport, who was petitioner's supervisor, presented untruthful evidence. Petitioner asked the Unemployment Insurance Appeals Board to open a new hearing so he could rebut the surprise false testimony, the Board denied the request. In an administrative writ before defendant Stone, petitioner was not allowed a trial de novo as is required by the court procedures. He raised the issue of false testimony, the judge ruled against him. Petitioner's appeal to the Sixth District was denied and the Supreme Court denied a review without comment. Petitioner brought an action against ZYCAD for pretextual unlawful dismissal when he was fraudulently asked to resign. The trial was postponed on request of defendants and petitioner because the unemployment issue was under appeal. When petitioner filed an At-issue Memorandum to reset the trial within the statutory 5 year limit, defendant Leahy dismissed his case under discretionary dismissal statute. According to CCP *583.340*, the period between the time that the trial was taken off the calendar and March 1989, was tolled as a matter of right, because it was impractical, impossible and futile for petitioner to bring it to trial. That tolling provision would have disallowed Leahy to exercise the

discretionary dismissal. Defendants ZYCAD had moved to shorten their time to request for discretionary dismissal, and Judge Whyte, the district court judge in this case, signed an order shortening their time to move, without Judge Whyte's order, Judge Leahy could not hear the motion for dismissal. Petitioner filed appeal against that dismissal. Defendant Rossi returned the timely mailed petition without consulting with the Supreme Court justices on May 6, 1992. Federal action was filed on April 27, 1993.

IV

Petitioner claims that there is a pattern of racketeering and systematic obstruction of justice and that there is a nexus that defendants are serving a corrupt enterprise and not engaging in lawful activity. This nexus still exists, as can be gleaned from the proceedings of the district and the circuit court. Petitioner has a very meritorious claim both under civil rights violation and under RICO provisions and under the rules governing fraud on the judicial system, albeit perpetrated by attorneys and judges. [8]

Petitioner believes that he had a right to receive the full benefit of the laws and other authorities from defendants, he was denied that right as a special case. He does not believe that this Court will sanction such an interpretation of its opinions or the laws of the land.

CONCLUSION

This petition raises the issue as to whether a citizen has a right of access to the judicial system without the intervention of attorneys, whose interests often are in conflict with the client's. An attorney is often interested in maximizing his future income, which may not be possible if he takes cases that place him in an unfavorable light before a judge, his professional colleagues, large legal firms or, the corporate litigants such as most of the defendants. The court would definitely see the truth in petitioner's presentation. Petitioner recalls and this court may be familiar with late Chief Justice Warren Burger's statements regarding attorneys, that they are often an impediment to justice, rather than a force for justice. Petitioner is not indicting the entire profession,

[8]None of these allegations were denied by defendants in the proceedings below.

however, these defendants do not seem to have any regard for justice, which has led to petitioner's seventeen year Oddessy.

Respectfully submitted,
April 18, 1996

G. AHMAD FARUQUI

APPENDIX

JUDGMENT OF THE CIRCUIT COURT

G. AHMAD FARUQUI — No. 94-16084
Plaintiff-Appellant — D.C. N0. CV-93-20297-RMV

v.

STATE OF CALIFORNIA; PACIFIC GAS AND ELECTRIC COMPANY; GRAHAM & JAMES, et al
Defendants-Appellees

APPEAL FROM the United States District Court for the Northern District of California (San Jose).

THIS CAUSE came on to be heard on Transcripts of the Record from the United States District Court for the Northern District of California (San Jose) and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court, that the judgment of the said district court in this case be, and hereby is AFFIRMED.

Filed and entered December 12, 1995
True copy by clerk of the court Jan 30, 1996
Filed in the district court Feb 01 1996

ORDER DENYING REHEARING

Before: GOODWIN and REINHARDT, Circuit Judges, and KING, District Judge.

The panel has voted unanimously to deny the petition for rehearing. Judge Reinhardt has voted to reject the suggestion for rehearing en banc, and Judges Goodwin and King so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. p 35.

The petition for rehearing is Denied and the suggestion for rehearing en banc is REJECTED.

Filed January 22, 1996

G. AHMAD FARUQUI No. 94-16084
Plaintiff-Appellant D.C. N0. CV-93-20297-RMV

v.

STATE OF CALIFORNIA; PACIFIC GAS AND ELECTRIC COMPANY; GRAHAM & JAMES, et al
Defendants-Appellees

Filed Feb 01 by the district court

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding
Argued and Submitted December 6, 1995*
San Francisco, California

Before: GOODWIN and REINHARDT, Circuit Judges, and KING, **
District Judge.

The Judgment of the District Court is affirmed substantially for reason given by the District Court in its order of dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

True Copy Jan 30, 1996

* Argued and submitted as to appellant, submitted on briefs as to appellees.

** Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

NOTICE OF APPEAL

Plaintiff hereby appeals all the orders of the district court dismissing plaintiff's complaint with prejudice and the judgments in favor of defendants as well as the denial of motion to recuse, and all other rulings of Judge Whyte. The reasoning behind the appeal is that the rulings are contrary to US Supreme Court decisions in ***United States v. Throckmorton*** 98 US 61, 65-66 (1878); ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.*** 322 US 238, 248-251 (1943); ***Haines v. Kerner*** 404 US 519-521 (1972); ***Maine v. Thiboutot*** 448 US 1 (1980); ***Forrester v. White*** 484 US 226 (1988); ***Antoine v. Byers & Anderson Inc.*** (1993) 124 L.Ed.2d 391; ***Buckley v. Fitzsimmons*** (1993) 113 SCt 2606, 125 L Ed2d 209 (952 F2d 965 reversed); ***NOW v. Scheidler*** 94 DAR 810 [114 SCt 798 (1994)]; ***Elder v. Holloway*** US Supreme Court 94-CDOS 1296 (2/23/94) [114 SCt. 1019]; ***Waco v. Baltad*** (1991) 934

F.2d 214-215; ***Preston v. U.S.*** (1991) 923 F2d 731, 733-735, (9th Cir); ***Liljeberg v. Health Services Acquisition Inc.*** 486 US 847 (1988); and of the 9th Circuit Court decision in ***FDIC v. O'Melveny & Meyers***, 969 F.2d 744, 746. [1] It denies plaintiff's rights to equal access to justice in violation of his 14th and 7th amendment rights under Title 42 Sections 1981 et seq, and under Title 18 Sections 1961 et seq, as well as under FRCP 8, 12. Plaintiff had briefed the court on most of these cases and in the oral hearings, yet the orders do not even mention these authorities, only obliquely mentioning that some of plaintiff's authorities do not apply here. Plaintiff had also pleaded violation of his rights under California and US statutes including CCP 128.5, 437c, 446, 473, 2033, 583.340, Civil 1708, 1714, 3539, UIC 1256, PUC 779, 779.1, 2106, 2108, 2109, Criminal Code 582, USC 42-1981 et seq, 18-1961 et seq.

June 17, 1994

JUDGMENT OF THE DISTRICT COURT

Pursuant to the court's orders dated January 11, 1994 and May 23, 1994 which granted the defendants' motions to dismiss and dismissed all defendants other than Phil Smith who plaintiff has agreed not [to]pursue further, judgment is hereby entered against plaintiff in favor of defendants.

It is ordered that plaintiff take nothing and the defendants recover from plaintiff their cost of action. [2] Dated 5/23/94 Filed May 24, 1994

Ronald M. Whyte
United States District Judge.

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[1]Later reversed by the Supreme Court on grounds that FDIC had no standing.

[2]The judgment does not mention the summary judgment for PG&E, which was part of the notice of appeal to the circuit court. The circuit court did not mention it in their judgment. Plaintiff did not agree not to pursue Phil Smith, he did not want to insist on it at that time, because the court was not paying attention to his pleadings.

ORDER (1) DENYING PLAINTIFF'S MOTION FOR RECUSAL; (2) DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION; AND (3) REQUEST FOR RULE 11 SANCTIONS.

... The judge who plaintiff requests be recused must determine whether grounds for refusal exist. ..... Plaintiff contends that Judge Whyte, as a former a [sic] Santa Clara County Judge, is a former colleague of many of the defendants and thus is biased. The fact that the judge formerly held a position with the state court is insufficient to require that the judge recuse himself for personal bias. [3] ..... Therefore, the fact that Judge Whyte was previously a state court judge is not a ground for recusal. [4] Further, plaintiff's claim at oral argument that Judge Whyte may be a witness is unpersuasive. Plaintiff has offered no facts to show why and to what Judge Whyte would be a witness. Plaintiff also points out that Judge Whyte signed an order shortening time for a defendant in plaintiff's Santa Clara Superior Court action. ..... Finally, plaintiff's allegation that the judge dismissed plaintiff's complaint without considering plaintiff's pleading is insufficient to show personal bias. .... The cases that plaintiff cites are not intervening [5]..... Therefore, the court denies plaintiff's motion for recusal. ..... Moreover, upon further reflection this court continues to believe that the holding and reasoning of its rulings are correct. Therefore, the court denies plaintiff's motion for reconsideration. ..... plaintiff is hereby warned that before filing any further motions with the court he must ensure that the motion is well grounded in fact, and he must make a reasonable inquiry into the law, particularly that of res judicata and immunity. Failure to do so may result in Rule 11 sanctions.

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[3]No personal bias was claimed, only that the orders showed bias in favor of defendants.
[4]Petitioner's assertion is: not that Judge Whyte was a state judge, but that he was a county judges who was a recent colleague of the defendants from the same court, similar to an attorney from the same law firm. The matters on which he could be a witness would have been as to how the judges in that court operated and how they were influenced by defendants. This was precluded by dismissal without leave to amend.
[5]Plaintiff did not assert that there was a personal bias against him, but that the court had ignored ***Liljeberg*** which was part of his pleadings. This showed bias in favor of defendants. JudgeWhyte did not find ***Liljeberg***, cited by petitioner, to be intervening!

... Plaintiff believes that there is a great appearance of bias and prejudice in those orders. Those orders did not give any consideration to his pleadings and declarations in opposition to the motions to dismiss and believes that in view of opinions of US Supreme Court in ***Throckmorton***, ***Hazel-Atlas***, ***Thompson, NOW v. Schiedler***, 94 DAR 810, ***Forrester*** these orders were in error and need to be reviewed by a judge who will not be partial or appear to be partial to the defendants, or to Judge Whyte or plaintiff, (***Liljeberg v. Health Services Acquisition Inc.*** (1980) 486 US 847, 108 SCT. 2194. If the judge has information about a matter under consideration, he should recuse himself 28 USC Section 455, even if he did not know of the conflict, under the self implementing operation of Section 455.) ..... It is plaintiff's request that a judge who may hear these motions be open to the ruling of the Supreme Court in ***Antoine v. Byers & Anderson Inc.*** (1993) 124 LEd 2d 391 regarding absolute or qualified judicial immunity - 950 F2d reversed, unanimous opinion.

"The proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity. (fn 4). [Citations], and ***Buckley v. Fitzsimmons*** (1993) 113 SCt 2606, 125 LEd2d 209. .... whereby the Court ruled that if civil rights violations are alleged, any state employee, be he a police officer, a prosecutor or a judge - if he claims absolute immunity, the burden is on him to show that his actions were in the performance of the duties he has been granted immunity for. .... Plaintiff's contention is that the defendants acted beyond all jurisdiction, the standard applied by the Supreme Court in ***Mireles v. Waco***, the case cited by defendants. The Supreme Court found that if a prosecutor manufactured evidence, he was no longer immune from action because he was performing the acts of a policeman. .... Similarly a judge cannot sign orders for a person to commit rape nor can he annul a statute by a minute order, ... or manufacture pleadings and facts ... Judge Whyte has prejudged plaintiff's facts ....

REPLY TO MOTIONS IN OPPOSITION TO RECUSAL AND RECONSIDERATION

...the orders in question have not shown that the imperatives of ***Thompson, Throckmorton***, ***Hazel-Atlas*** (reversal of void decisions obtained through miscarriage of justice or by fraud), are not applicable to this case. they have conceded that plaintiff has a valid position to place the orders in question as being in conflict with the legal and equity rulings of California and US Supreme Court, as well as of Section 473 CCP. .... In support of plaintiff's positions regarding RICO claims against all defendants, since the orders are silent, on the requirements that plaintiff had to meet to maintain this action, plaintiff introduces the following: The allegation of obstruction of justice is governed by 18 USC Section 1503, California Penal Code Section 182. ..... That inference can clearly be drawn from the First amended complaint. .... When judges flaunt the law or violate a citizen's rights they have no immunity because they have violated the law -- the very shield that gave them immunity. They have a burden to appear in a court of law and show that they were following the law[6] ... their own words in as cited in published opinions state that they are constrained by the language of the statutes and cannot deviate from it. The immunity is for judicial acts and not "any acts by judges". .... ***Neitzke v. Williams*** (1989) 490 US 319, 327 (a judge cannot dismiss a complaint because he disbelieves the allegations), that opinion supersedes ***Echols*** and ***Shakespeare*** arguments of the orders which Judge Whyte relied upon rather than the Supreme Court opinions. In ***Elder v. Holloway*** (1994) the US Supreme Court places the duty on the court do proper research even if the party does not present all the authorities. The GO #34 is designed to require all parties to include any authorities that oppose their position, and then explain why they are not applicable. ..... In view of the foregoing plaintiff respectfully requests Judge Whyte to recuse himself ....

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[6]Petitioner believes that when the Court examines the record it will find multiple violations of the law in a willful manner and it was the result of a conspiracy.

EXCERPTS OF DISTRICT COURT ORDERS DATED 1/10/94, 1/11/94

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE

The motion dismiss of defendant William Garfield was heard on January 7, 1994. The court has read the moving and responding papers and heard the oral argument of the plaintiff on the motion. For the reasons discussed below, the court grants defendant's motion and dismisses plaintiff's complaint with prejudice. .... Moreover, it is a well-settled rule that a plaintiff may not relitigate a state court judgment by recasting his complaint as a civil rights action. See Hagerty v. Succession of Clement, 749 F2d 217, 220 (5th Cir 1984), cert denied, 474 u.S. 968 (1985); [7].... Furthermore, many of plaintiff's allegations regarding Garfield appear to have previously been addressed and disposed of by the state court [8] .....

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE

The motion to dismiss of defendants Ambler, Komar, Zecher, Nichols, Hansen, Bonney, Stone, and Leahy ("moving defendants") was heard on January 7, 1994. The court has read the moving papers and heard the oral argument on the motion. For the reasons discussed below, the court grants defendant's motion and dismisses plaintiff's complaint with prejudice. ....Section VII of the First Amended Complaint also alleges a number of actions taken by some of the individuals judicial defendants. (First Amended Complaint at pp. 5-10). As it relates to moving defendants, this section of the complaint includes allegations that [here the allegations of the complaint are repeated somewhat out of context] ... These allegations albeit more specific than those discussed above, also fail to state a claim, because all of these allegations involve

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[7]No mention is made of, ***Throckmorton***, ***Hazel-Atlas*** which were part of plaintiff's pleading.

[8]No mention is made of the RICO action.

judicial acts for which the moving defendants are entitled to absolute immunity. "Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacity." Ashleman v. Pope, 793 F2d 1072, 1075 (9th Cir 1986) (en banc). [9] Plaintiff's conclusory allegation that "the judges committed these acts in administrative capacity and with full knowledge that they were violating the law" is not enough to take the alleged acts outside the scope of judicial immunity. "Judicial immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." Id. [10] Because the moving defendants are entitled to judicial immunity for all of the "specific" allegations against them, the first amended complaint must be dismissed as to the moving defendants. [11]

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE

The motion to dismiss of defendants State of California, Pete Wilson, Daniel Lundgren, Malcolm Lucas, Nat Agliano, Christopher Cottle, Patricia Bamaatre-Manoukian, John Davidson and John Rossi ("moving defendants") was heard on January 7, 1994. The court has read the moving and responding papers and heard the oral argument on the motion. For the reasons discussed below, the court grants defendant's motion and dismisses plaintiff's complaint. ..... They move this court for

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[9]Just as the Court in ***Hazel-Atlas*** determined that fraud on the court subverts the judicial system, the RICO cause of action against judges is of such great importance for the judicial system that it should never be tolerated that judges should be give a free reign to conspire and obstruct justice, because they are the very guardians of citizen rights which may involve such acts. Who will police such persons if they are the sole determiners of these acts. Recently one of the defendants was a defendant in an action of conspiracy before the 9th Circuit. These matters are proliferating because there is no check and the defendants use the immunity shield.

[10]Petitioner had amended the complaint to meet the specific requirement of RICO action which was not included in the original, the hasty judgment did not afford even one opportunity and no guidance as to the deficiencies (specific) to meet to amend the complaint further. There are innumerable examples of court cases where the litigants are allowed to amend 5 or 6 times, including the citations by the court and respondents.

[11]Petitioner's contention is not based on the injury to him alone, but the subversion of the judicial system that is implied in the complaint, see ***Hazel-Atlas*** and its concern with integrity of judicial system, the great responsibility which resides in the Supreme Court and the judiciary. It cannot be dismissed offhand.

dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that the complaint fails to state a claim upon which relief can be granted against these defendants, that some or all of these defendants are entitled to immunity from suit, that the complaint fails to allege facts creating legal liability, and that the court lacks jurisdiction. .... **Judge defendants:** The allegations against defendant Lucas include " that he failed to review plaintiff' petitioner on six occasions", and "violated his duty to administer the Supreme Court Clerks." .... These allegations, although stated against the individual judges, are no less vague and conclusory than those discussed above. .. the remaining allegations are vague and conclusory, the first amended complaint must be dismissed as to these defendants. [12]

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE

The motion to dismiss of defendants Wilson, Sonsini, Goodrich & Rosati, Charles Compton, Linda McPharlin, Richard Gray and Peter Chen ("WSG&R defendants") and defendants Graham & James and Hans Troesch ("G&J defendants) (collectively "moving defendants") were heard on January 7, 1994. [13] The court has read the moving and responding papers and heard the oral argument on the motion. For the reasons discussed below, the court grants defendant's motion and dismisses plaintiff's complaint with prejudice. ..... They move this court for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that the complaint fails to state a claim upon which relief can be granted. Moreover, all of plaintiff's allegations regarding the actions of the individual defendants have previously been addressed and disposed of by the state court in plaintiff's action against CAE Systems Inc. (See opinion of California Court of Appeal, Sixth Appellate District, No. H004152 at p. 13). As these claims were previously raised and finally decided in the state court, they are not claims upon which relief can be

[12]The court assumed jurisdiction and the defendants did not appeal that matter.

[13][Note 1 in the order]The court will address both motions in this order as both motions are brought on the same grounds and raise similar issues.

granted by this court and must be dismissed. [14] ... Moreover, the moving defendants owe no duty to plaintiff and thus cannot be liable to him. [15] Therefore, the court dismiss plaintiff's complaint as to the moving defendants with prejudice.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE

The motion to dismiss of defendant Zycad Corporation was heard on January 7, 1994. The court has read the moving and responding papers and heard the oral argument on the motion. For the reasons discussed below, the court grants defendant's motion and dismisses plaintiff's complaint with prejudice. ..... The complaint alleges violations of plaintiff's civil rights and due process rights as well as violations of U.S.C. Section 1961 (RICO) [16], conspiracy, mail fraud, wire fraud, securities fraud, and numerous other statutory and constitutional violations. ....The lawsuit was dismissed in 1990. The Court of Appeal, Sixth Appellate District, affirmed that dismissal in 1992. [17] They move this court for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that the complaint fails to state a claim upon which relief can be granted.

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[14]The opinion of the Appellate Court contained the finding of a nonexistent stipulation. The superior court decision was based on denial of rights under Section 2033 of CCP and false declarations by Gray and McPharlin and the actions of these defendants.

[15]When the defendants violated their duty as attorneys and committed fraud on the court to get judgment against plaintiff, they were liable for those actions. ***Kimes v. Stone*** 96-CDOS 3596 (1996 9th Cir).

[16]The allegations of the complaint are directed to "corrupt" and "influence" elements of the statute. Defendants committed acts of corruption and used influence to achieve the results.

They committed more than two such acts over a period of 7 years.

[17]The petition for review was timely presented to the Supreme Court which was returned by defendant Rossi on May 6, 1992. The complaint was filed on April 27, 1993 in the federal court for violation of civil rights. Defendants claimed that the statute of limitations had expired. In ***Now*** the Court has found that general allegations include all specific elements necessary, if dismissal is under FRCP 12(b)(6). The Court has held that if the statutory language is used, it defeats dismissal under 12(b)(6).

PROOF OF SERVICE

Circuit Court Docket No: 94-16084

District Court No: CV-93-20297

I, G. Ahmad Faruqui, am the petitioner in this matter.

On June 19, 1996 I served 3 copies each of the Petition of Writ of Certiorari to the Supreme Court of the United States on:

Ms. Teresa L. Stinson
Sedgwick, Detert, Moran & Arnold
One Embarcadero Center, 17th Flr
San Francisco, CA 94111-3765

Ms. Lisa B. Berkowitz
Office of the County Counsel
70 W. Hedding St. 9th Flr
San Jose, CA 95110-1770

Mr. Robert R. Buell
Office of Attorney General
2101 Webster St.
Oakland, CA 94612-3049

Ms. Merri A. Baldwin
Rogers, Joseph, O'Donnell & Quinn
311 California St.
San Francisco, CA 94104

I declare under penalty of perjury that the above is true. Signed on June 19, 1996 in San Jose, California.

_____

G. Ahmad Faruqui